

REMARKS

This Amendment is considered fully responsive to the Final Office Action mailed May 21, 2008. As such, Applicant respectfully requests reconsideration of this application as amended. Claims 33-54 have been cancelled without prejudice. Claims 55-72 have been added. No new matter has been added.

Claims 55-72 are pending in this application and are presented for examination.

RESPONSE PURSUANT TO 37 C.F.R. §§ 1.111 AND 1.114

Previously pending claims 33-36, 41-45, 47-51, and 53-54 were rejected in the May 21, 2008 Office Action as purportedly being anticipated by U.S. Patent No. 6,236,642 to Shaffer et al. ("Shaffer"). In addition, previously pending claims 37-38, 46 and 52 were rejected as purportedly being unpatentable over Shaffer in view of U.S. Patent No. 6,084,858 to Matthews et al. ("Matthews"). Applicant respectfully disagrees with these rejections. As discussed below, newly added claims 55-68 are patentable over both Shaffer and Matthews, taken alone or in combination.

Shaffer

Shaffer generally discloses a system for determining optimal routes in a network and means for re-routing network traffic from a sub-optimal route to an optimal route. In particular, the system in Shaffer assigns a cost to possible routes through a network, wherein the "costs of the routes may be based on the number of hops, the number of nodes, or the time required per hop or per node..." Shaffer, col. 3, lines 41-44. However, unlike independent claims 55, 59 and 64, Shaffer does not teach the modification of routing tables based on an analysis of an amount of time (or elapsed time) relative to the transmission of content from a

source node to a network. Thus, Shaffer does not anticipate claims 55, 59 and 64, and their respective dependent claims.

Furthermore, independent claim 65 includes the limitations of modifying a routing table based on an analysis of a first cost against a threshold cost, and modifying the routing table based on an analysis of a second cost against a second threshold cost. Shaffer does not teach using a threshold value, let alone two threshold values, for use in making routing decisions. Instead, Shaffer assigns costs to various routes and determines optimal routes based on these route costs. Thus, Shaffer does not anticipate independent claim 65 and its dependent claims.

Matthews

Matthews generally discloses a method for selecting a communication path over which to send a communication load between a first station and a second station in a communication network. Matthews, Abstract. For instance, Matthews discloses selecting a communication path based on a threshold test using a combination of three metrics (the “Metric Z value”) – a cost metric, a usage metric, and an intrinsic bandwidth metric. Matthews, e.g., cols. 7-8. In contrast, independent claims 55, 59 and 64 include using an analysis (or comparison) based on an *amount of time* relative to the transmission of content to one or more networks. Since the “Metric Z value” in Matthews (based on cost, usage and bandwidth) does not contemplate using a metric based on an *amount of time* relative to the transmission of content to one or more networks, Matthews does not anticipate independent claims 55, 59 and 64, and their respective dependent claims.

Furthermore, independent claim 65 includes the limitations of modifying a routing table based on an analysis of both a first cost against a threshold cost and a second cost against a second threshold cost. Matthews discloses using only a single threshold test (based on the Metric Z value) to make a routing selection.

Matthews therefore does not anticipate independent claim 65 and its dependent claims.

Shaffer in view of Matthews

Applicant believes that Shaffer and Matthews were not properly combined in the §103(a) rejection of the May 21, 2008 Office Action. However, the combination of Shaffer and Matthews, although improper, would be insufficient to present a *prima facie* obvious rejection since they do not teach each and every limitation of independent claims 55, 59 and 64. Namely, neither Shaffer nor Matthews teach or suggest the limitation(s) of, *inter alia*, modifying a routing table based on an analysis of an amount of time related to the transmission of content to one or more networks. Furthermore, with respect to independent claim 65, neither Shaffer nor Matthews teach or suggest the limitation(s) of, *inter alia*, modifying a routing table based on an analysis of a first cost against a threshold cost, as well as an analysis of a second cost against a second threshold cost.

For at least these reasons, claims 55-68 are patentable over Shaffer and Matthews, taken alone or in combination. Therefore, a timely Notice of Allowance is requested.

TERMINAL DISCLAIMER PURSUANT TO 37 C.F.R. § 1.321

Applicant submits herewith a terminal disclaimer to commonly owned U.S. Patent No. 6,473,405 (the '405 patent), filed June 25, 2001 (claiming priority to commonly owned U.S. Patent No. 6,275,470, filed June 18, 1999). Although Applicant does not believe this to be necessary, the terminal disclaimer is being submitted to expedite prosecution of the application and to foreclose the possibility of an obviousness-type double patenting rejection based on the '405 patent, particularly with respect to claims 9 and 12 thereof.

In re Patent Application No. 10/630,559

Confirmation No.: 8636

Inventor: Livio Ricciulli

CONCLUSION

Applicant respectfully submits that this application is in condition for allowance and an early action to that effect is earnestly solicited. The Examiner is respectfully invited to telephone the undersigned to resolve any outstanding issues.

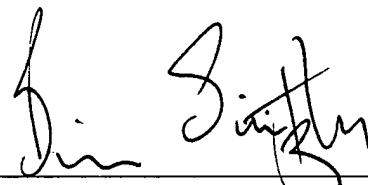
CHARGE STATEMENT: Deposit Account No. 501860, order no. 2711-0012

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (missing or insufficiencies only) now or hereafter relative to this application and the resulting Official Document under Rule 20, or credit any overpayment, to our Accounting/ Order Nos. shown above, for which purpose a duplicate copy of this sheet is attached.

This CHARGE STATEMENT does not authorize charge of the issue fee until/unless an issue fee transmittal sheet is filed.

CUSTOMER NUMBER
75948

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